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PART I

IMPORTANT GOVERNMENT ORDERS

CHIEF SECRETARIAT

Working of the Debt Conciliation Act in the State.

READ—

Government Order No. R. 3847-18—L. R., 323-39-6, dated 18th December 1939, deputing Mr. B. K. Ramakrishnaiya, M.A., LL.B., Assistant Secretary to Government, to examine the working of the scheme of Debt Conciliation in the State in all its aspects and submit a report to Government.

2. Letter No. 112—D.C.B., dated 25th March 1940, from the said officer, submitting his report.

ORDER No. R. 6799-810—L. R. 323-39-17, DATED BANGALORE, THE 22ND MAY 1940.

Mr. Ramakrishnaiya has examined in detail the working of the Debt Conciliation Act, 1937, and other allied matters and has submitted an interesting report which is published for general information. The High Court, the Revenue Commissioner in Mysore, the Registrar of Co-operative Societies and the Deputy Commissioners of Districts are requested to forward their views to Government at an early date on the points dealt with in the Special Officer's report. Suggestions received from the public before July 15, 1940, will also be duly considered by Government in passing orders on the Report.

(Printed as an Annexure.)

B. T. KESAVIENGAR,
Chief Secretary to Government.

ANNEXURE.

REPORT OF THE SPECIAL DUTY OFFICER ON THE WORKING OF THE DEBT CONCILIATION SCHEME IN THE STATE.

I. INTRODUCTORY.

The Committee appointed by Government in 1934 to consider measures of relief to the agriculturists to tide over the economic depression recommended, among other things, that a measure of debt conciliation may, with advantage, be tried so that the standing debts may be brought down within the repaying capacity of the debtors. In their order, dated the 30th October 1935, Government generally accepted the scheme proposed by the Committee except for a few modifications. This scheme was further examined and the High Court was also consulted and a Bill was placed before the Legislative Council in June 1936, and it was promulgated into law in February 1937, as Act VI of 1937.

2. Government in their Order, dated 13—14th June 1938, sanctioned the introduction of the scheme for a period of two years with effect from 1st July 1938, in six taluks noted in the margin as an experimental measure. The Debt Conciliation Boards in these taluks have thus been working for just over 18 months in conciliating debts on the voluntary basis. Till the end of December 1939, the Boards received 622 applications involving a total amount of Rs. 8,35,947-3-7 (392 applications by debtors covering a debt of Rs. 7,02,770-12-3 and 230 applications by creditors covering a debt of Rs. 1,33,176-7-4). Of these, conciliation was effected in 64 cases, reducing the debt amounting to Rs. 55,852-12-1 to Rs. 35,920-1-6. This has resulted in a total reduction of such debts by about Rs. 20,000 only. The total expenditure incurred by Government for the purpose during the period amounted to Rs. 4,941-7-0. (For details see the tabular statements I and II in the Appendix).

Chikballapur, Madhugiri, Devanhalli, Nagamangala, Sagar, and Koppa.

3. From the reports of the working of the scheme in these taluks and from representations made on the floor of the Representative Assembly and the Legislative Council and by the public, Government found that the results were not sufficiently encouraging and the expectations which they entertained when the scheme was sanctioned had not been realised. In answer to an interpellation during the Dasara Session of the Representative Assembly last year, Government were pleased to state that it was under their consideration to have the working of the Debt Conciliation Boards examined with a view to remedying defects, if any. Government were accordingly pleased to place me on special duty to examine the working of the scheme in all its aspects and submit a report to Government within one month indicating the defects, if any, and suggesting the lines on which action may be taken so that the object of the scheme may be more fully realised.

4. With a view to acquaint myself with the working of the Boards, I visited all the places where the Boards were located and had also discussions with the members of the Board in those places and also the general public. I had also discussions with the District Judge, Shimoga, Deputy Commissioner, Mandya, and with the members of the Bar at Narasimharajapura and Mandya. At my request, several gentlemen, both official and non-official, were kind enough to send me their suggestions and recommendations. The Merchants' Association, Shimoga, also forwarded to me a copy of the resolutions passed at a meeting of theirs on the subject in question; and several representations were also made to me by individuals during the meetings I had in various places. With the kind permission of the High Court, I was enabled to collect statistics regarding the institution of suits and stay proceedings relating to the taluks where the Debt Conciliation Boards are established. My acknowledgments are due to all these persons and institutions for their assistance and co-operation in my investigation.

II. WORKING OF THE DEBT CONCILIATION BOARDS.

5. A close examination of the appended tabular Statement I will show that of the 622 applications filed before the Board, 81 applications covering a debt of Rs. 1,42,199-5-8 have been rejected under Section 7 on account of the failure on the

part of the applicant to furnish the necessary particulars; 199 applications covering a debt of Rs. 2,62,801-9-0 have been dismissed under section 9 either for the reason that the applications were not pursued with diligence or that conciliation was impracticable; and four applications covering a debt of Rs. 42,950 were dismissed under section 17 as no conciliation could be effected within a year. It will thus be seen that the number of applications in which conciliation was effected bears a small proportion to the number of applications filed or to those rejected or dismissed. The figures given below show the number of applications filed before the Boards during the three half-years when the Act has been in force:—

Period	Chikballapur	Madhugiri	Devanhalli	Nagamangala	Sagar	Koppa
1st July 1938 to 31st December 1938.	28	42	25	24	75	11
1st January 1939 to 30th June 1939.	22	19	19	89	29	25
1st July 1939 to 31st December 1939.	21	11	43	95	20	24

6. A study of the above statistics reveals that the expected result has not been achieved. During the short period that the Act has been in operation, it has not been able to redeem the indigent debtorse to any appreciable degree from the clutches of moneylenders. But if we bear in mind that the Act has been in operation only for a short period of 18 months or so, it may perhaps be too early to condemn it on the basis of the results achieved. In the first place, people must get accustomed to the facilities offered in the Act. Many of the borrowers are ignorant of the beneficial provisions of the Act. Even those who have a knowledge of the provisions of the Act have not availed themselves of the benefits offered as they desire to stand well with their creditors and do not want to lose the little credit that they are now able to command. As suggested by the Banking Enquiry Committee, some amount of propaganda is also necessary to make the creditors and the debtors understand that the honest creditor and the honest debtor have each to gain something under the Act.

In the next place, the Boards have met only for a few days during the period for transacting business. The number of days on which the Boards have met vary from 23 to 60 days during this period of 18 months. Naturally much work cannot be expected to be turned out during these sittings. There is a welcome feature that latterly the Boards have been meeting more often than before. It may be expected that the output of the work will also be much greater. It is not so much the restricted scope of the Act but the absence of any provision to enforce prompt settlement and payment of conciliated debts that have made the Act ineffective. At present the Board merely compels the creditor to reduce his amount without compensating him either by ready cash payment or by giving him property. Even the reduced amount is spread over a large number of years. If a cash payment is offered it will also be very easy to persuade the creditor to take a much smaller amount than is really due to him. If some provision can be made for the payment of conciliated debts, there is no reason why the Act could not be successfully worked. It is no doubt true that the Act has led to the adoption of questionable practices. Documents have been taken for much larger amounts than what is really advanced. Sale deeds have been taken where the transaction really intended is only a mortgage. Such practices cannot obviously be a lasting phase and can be expected to disappear now that the Moneylenders Act has been introduced. This Act also forbids the molestation and intimidation of debtors and punishment for these offences is also provided for. These factors may be expected to induce the creditor to seek more and more the help of the Debt Conciliation Boards. That the benefits of the Act have probably been just begun to be understood can be gathered from the fact that in Nagamangala and Devanhalli taluks, the creditors have of late been freely resorting to the scheme. The main reasons which influence them are apparently the saving of heavy cost and avoidance of uncertainties and worries of litigation. The working of the Act requires therefore to be watched for some time more before one can decide whether its benefits are extensive or not.

7. *Some irregularities noticed.*—(1) In a petition filed by a creditor, the Board did not call for any statement from the defendent as contemplated in section 8 (3). It merely examined the debtor orally and even then did not elicit from him whether the debt in question was the only debt due by him or if he had any other debts to pay. Conciliation was effected by the debtor agreeing to sell his properties to the creditor in satisfaction of his debt.

(2) No process fee is levied in respect of notices issued either under section 8 or under section 10. Even the postal charges for sending notices by registered post under section 8 (2) is met from the contingent grant of the Board and not levied from the applicant.

(3) Contrary to the mandatory provisions of section 17, cases are allowed to be pending for more than a year.

(4) Contrary to the underlying principle of the Act and without the consent of the creditor, the Board directs that the creditor should receive what in the opinion of the Board is a fair amount and proceeds to conciliate on that basis.

(5) Rent as defined in the Mysore Land Revenue Code, is excluded from the definition of the "debt". Any decree relating to such rent is *ipso facto* taken out of the purview of the Act; but in some cases rent decrees also have been conciliated by the Board.

(6) In some cases statements under section 10 (2) are not filed and in some other cases even notices under this section are not issued.

(7) Conciliation has been effected on an application filed by a debtor in respect of joint debt, or a debt guaranteed by a surety, though there is no provision in the Act empowering the Boards to conciliate such a debt in the absence of the co-debtor or the surety.

(8) Even after the secured creditor has made a statement refusing to accept a settlement, his presence is insisted upon till the application is disposed of.

(9) Even after confirmation of sale and delivery of possession (which indicates that the debt is no longer existing) the creditor-purchaser is asked to appear before the Board on every date of hearing.

8. DOUBTS FELT BY THE BOARD.

(1) *Whether Process Fee should be paid for Notices under Sections 8 and 10 and who should bear the cost of Postage for sending Notices under Section 8 (2) by Registered Post.*—The practice regarding the levy of process fee and postal charges is not uniform in all the Boards. While some of the Boards levy postal charges from the applicants concerned; other Boards meet such charges from their contingent grants and no Board seems to be levying the process fee for notices. It is an elementary principle that the applicant who prays for the issue of any process should pay the necessary charges. There is also no justification for the Boards meeting the cost of sending notices by registered post from out of its contingent grant. In respect of notices under section 8 (2), both the process fee and the postal charges must be levied from the applicants; (compare Rule 27 (3) of the Mysore Insolvency Rules); and process fee under section 10 (2) must be levied from the applicants. To make the point clear a rule may be added as in Punjab that the cost of issuing these notices shall be recoverable by the Board from the applicant in advance.

(2) *Whether the Boards may issue coercive processes to secure the presence of Parties and Witnesses.*—Section 13 provides that subject to the rules made under the Act, the Board may exercise all such powers connected with the summoning and examining of parties and witnesses and with the production of documents as are conferred on a Civil Court by the Code of Civil Procedure, 1911. Rules 15 to 19 of the Debt Conciliation rules govern the procedure for summoning parties and witnesses. No provision is made here for issue of warrant or proclamations to enforce the attendance of defaulting parties and witnesses. It is desirable that the rules be amended by empowering the Board to issue such processes and to exercise the following powers under Order 16 of the Civil Procedure Code, 1911, subject to the prior sanction of the Deputy Commissioner—

(*a*) to issue warrant of arrest;
(*b*) proclamation and attachment of property,
(*c*) the imposition of fines; (Compare Rule 49 of the Bengal Agricultural Debtors Rules).

(3) *Difficulty experienced in the case of Illiterate Debtors not being able to furnish full Particulars required under Section 6.*—Some difficulty seems to have been felt by the debtors in this behalf as shown by the fact that out of 392 applications filed by the debtors, about 80 applications have been dismissed for failure on their part to furnish correct particulars. It is, however, difficult to say whether in all these cases the debtors were really unable to furnish particulars or whether after having achieved their object in having execution proceedings against them stayed, they were indiffierent regarding the further prosecution of their applications before the Board and deliberately allowed their applications to be dismissed, particularly as rejection under section 7 would not preclude them from making a fresh application. But the difficulty till now experienced by them can hereafter be easily got over. With the introduction of the Moneylenders Act, the debtor has now the right to get a correct statement of his debts from his creditors. It is also open to him to obtain a certified copy of the Record of Rights Index register as regards the particulars of the landed properties owned by him. It should thus be possible for an honest debtor to furnish without much difficulty the particulars required under section 6.

(4) *Whether in determining if a Debt is subsisting or not the ordinary Law of Limitation should be applied or Limitation provided in section 24 of the Mysore Agriculturists' Relief Act should be deemed to be applicable.*—Provision in section 24 of the Agriculturists' Relief Act is a special rule of limitation applicable only to suits against agriculturists as defined in that Act; and it follows therefore that for the purposes of determining under the Debt Conciliation Act whether a debt is or is not barred by time, the Board should be guided by the ordinary rules of limitation.

(5) *When the Secured Creditor to whom more than 50 per cent of the total Debt is due does not agree to Settlement, whether a Settlement can be effected in respect of the remaining Unsecured Creditors.*—In view of the clear provisions of Section 14 (1) an agreement of a settlement is to be recorded only when a creditor to whom more than 50 per cent of the debt is owing comes to a settlement. So no settlement is possible in a case like the one under consideration.

(6) *Whether in case of Revival of an Application under Section 24, the period of one year prescribed under Section 17 is to be counted from the date of the original Application or from the date of Revival.*—I think the starting point must necessarily be the date of application. While computing the period of one year, the period from the date of dismissal of the application till the date of its revival is to be excluded.

(7) *Whether in respect of Applications filed by the Creditor, an examination of the Creditor is necessary under section 10, as in the case of the Debtor.*—A perusal of sections 4 to 10 of the Act clearly indicates that at that stage an examination of any creditor is unnecessary and it is only with a view to determine whether it is desirable for the Board to attempt to effect a settlement that the debtor is to be examined under section 10. Creditor's examination will, if necessary, take place after a statement is filed by him under section 10.

(8) *Whether for the purpose of registering the Agreement executed under Section 14, Parties to the Agreement have to appear before the Sub-Registrar.*—The present procedure adopted by the Boards is to expect the parties to appear before the Sub-Registrar and get the agreement registered. The said procedure clearly overlooks the beneficial provisions of section 14 (2) and (3) and causes unnecessary delay and lot of trouble to parties who might be living in various places and at great distances from the Sub-Registrar's Office. The object of the legislature in enacting Section 14 (3) appears to be just to avoid unnecessary delay and inconvenience to the parties. It seems enough if the Chairman of the Board sends the agreement to the Sub-Registrar who is bound to register it by virtue of the provision of Section 14 (3) of the Act, read with section 88 of the Registration Act, and return it to the Chairman. Sub-section 2 of section 14 also requires that an agreement shall be registered within 30 days from the date of making thereof. The procedure suggested above will also help the Board to get the document registered within the prescribed period. Sub-section (2) of section 14 also contemplates the framing of some rules for the guidance of the Chairman. I would suggest that suitable rules may be made on the analogy of Rule 103 of the Bengal Agricultural Debtors Rules.

(9) *Whether a Creditor to whom less than a sum of Rs. 100 is due, can file a Petition before the Board when the aggregate debts of the Debtor exceed Rs. 100.*—According to the definition of debtor, a debtor is a person whose debts exceed Rs. 100. It is open to such a debtor to file an application under section 4 (1). Section 4 (2) provides that if the debtor has not made an application, any of his creditors may make an application to the Board to which the debtor might have applied. It is not the amount due to any individual creditor but the total amount due by the debtor that determines the question whether an application can be filed before the Board.

(10) *Whether an Agreement not registered within 30 days of its making is to be treated as cancelled.*—In view of the mandatory provision of section 14 (2) that an agreement shall be registered within 30 days from the date of making thereof, it seems to be fairly clear that if registration is not effected within the prescribed period, the agreement cannot take effect as if it were a decree of a Civil Court and will not be executable as such. It is suggested by one of the Boards that, instead of 30 days, a period of 90 days may be fixed for getting the agreement registered. There seems to be no real necessity for enlarging the period. Section 14 (1) requires that if a settlement is arrived at between the parties it shall *forthwith* be reduced to writing in the form of an agreement and under sub-sections 2 and 3, the Chairman has merely to send the agreement for registration,—of course, after levying the necessary cost from the parties concerned as per Rule 21 (2). Such simple and speedy procedure having been prescribed for the registration of the documents, a period of 30 days seems to be sufficient.

(11) *Whether interest that is already paid should be taken into consideration in calculating the amount due as per Section 16.*—This section merely introduces the rule of 'Damdupat' in respect of matters before the Board. It only means that at the time the Board settles the amount due to any creditor, it shall not allow as interest any amount greater than the principal.

(12) *The effect of a Certificate under Section 19 (1) in respect of (i) a Decree already passed; and (ii) in respect of a Pending Suit.*—As for the creditor who has already obtained his decree, the certificate does not affect him.

In the second case, the creditor will not be entitled to the cost of the suit then pending and whatever may be the rate of interest mentioned in the bond, he will not be entitled to get interest on his debt from the date of certificate in excess of simple interest at 6 per cent per annum (See A. I. R. 1935, Nagpur 43).

(13) *Whether the Stamp Duty recoverable on an Agreement is only ten annas or whether it is to be recovered on the value of the subject-matter of the Agreement.*—The practice in this behalf does not seem to be uniform. While some of the Boards get the agreement executed on a ten-anna stamp paper, other Boards insist that the stamp duty should be paid on the value of the subject-matter of the agreement. In view of the consideration that the Act is intended for the benefit of the debtor and the fact that Rule 21 (1) provides that the stamp duty on an agreement should be paid by the debtor, it appears to me that the stamp duty of ten annas is sufficient.

(14) *Whether Decreed Debts and Secured Debts could be re-opened and scaled down and Certificates issued in respect of them under Section 19.*—In view of the definition of the term debt which includes both the secured debts and decreed debts, the Boards are thoroughly competent to deal with these kinds of debts also. The only point to be noticed is that while the Board is ordinarily at liberty to decide disputes regarding the existence of the amount of debts due, it has no such power in respect of a decreed debt which shall be taken as conclusive evidence as to the existence and the amount of the debt. No question of scaling down these debts arises as the Board has no power under the Act to scale down debts but can persuade the creditor to reduce the amount due to him both in respect of the secured debt and the decreed debt. If the conditions prescribed in section 19 are satisfied, the Board can issue a certificate in respect of both the secured debt and the decreed debt. No stage is fixed for issue of a certificate.

9. Some other doubts felt by the Boards and suggestions made by them to improve the Act are considered in connection with the proposals to amend the existing Act.

10. Before closing the topic on the working of the Boards, I wish to make a few observations on the effect of the establishment of the Debt Conciliation Boards

on the institution of suits in the Civil Courts. The Debt Conciliation Boards were started in six taluks in the year 1938-39. The figures given below relate to the institution of the suits filed from these taluks in the years 1937-38, 1938-39 and the first half of 1939-40, as also the number of applications filed before the respective Conciliation Boards.

Year	Chikballapur		Madhugiri		Devanhalli		Nagamangala		Sagar		Koppa	
	1*	2*	1	2	1	2	1	2	1	2	1	2
1937-38 ...	163	...	78	...	156	...	305	...	168	...	25	...
1938-39 ...	126	50	43	61	102	44	222	113	137	104	21	36
1939-40 ... (first half year)	68	21	64	11	59	43	128	95	86	20	25	24

1* Represents the number of suits filed in the Munsiff's Court for recovery of secured and unsecured debts.

2* Represents the number of petitions filed before the Debt Conciliation Boards.

A scrutiny of these figures reveals that in the year of the establishment of the Debt Conciliation Boards, there was a sudden fall in the institution of suits, obviously for the reason that the creditors were not fully aware of the scope of the Act and chose to wait and watch the working of the Act instead of going to Courts. But during the course of the first year of the working of the Boards, they must have come to know that the debtors were not likely to approach the Boards in large numbers for relief and consequently we find that corresponding to the decline in the institution of petitions before the Board there is an increase in the institution of suits, approximating to the old level and in some cases even exceeding that limit (*e.g.*, see figures for Madhugiri and Koppa). It looks as though the usefulness of the Boards is in a way reflected in the raise or fall of institution of suits from the respective taluks where the Boards are situated.

III. REMEDIAL MEASURES.

(i) *General Suggestions.*

11. Opinions furnished and representations made to me during the meetings cover almost the entire field of the Debt Conciliation Act. Most of these suggestions aim at replacing conciliation by compulsion and in the view of many persons, the Debt Conciliation Act serves no purpose and if the situation is to be met the present Act must be replaced by an Act like the Madras Agriculturists' Relief Act or the recently-enacted Bombay Agricultural Debtors' Relief Act. I feel that the settlement of debts on voluntary basis and by resort to compulsion are fundamentally opposed to each other, and that it would perhaps be outside the scope of my special duty to consider the desirability of substituting compulsion for conciliation in the scheme for debt relief. But as a number of persons and even the Conciliation Boards have urged the question, I think I may just as well briefly discuss the desirability or otherwise of substituting compulsion by conciliation.

12. Under section 14 of the Act, a Conciliation Board can effect a settlement only if creditors to whom more than 50 per cent of the debts are owing, are agreeable to the settlement. The Boards can do nothing more than persuade the creditors to accept their suggestion. It is still open to the creditor or creditors to whom more than 50 per cent of the amount is due to withhold consent and thwart any agreement effected by the Board even with the rest of the creditors. The element of compulsion provided in sections 19 and 20 is so feeble that it has not much deterrent effect on recalcitrant creditors. It is also noticed that even the power of issuing a certificate has not been exercised by some of the Boards. (It cannot be said that in all those cases in which creditors refused to accept the offer made by the debtor, the said offer was not fair and the Board consequently did not issue any certificate). It cannot be denied that no system of relief based on mutual agreement could help the party who is in a disadvantageous position. For this reason, the trend of legislation in British India and other States has recently turned towards compulsion. Madras was the first to pass an Agriculturists' Relief Act accepting the principle of compulsion. Even in Central Provinces where the

Debt Conciliation Boards were doing very good work, a Debt Relief Act has recently been passed for the reason that the Debt Conciliation Act has failed to do all that was required and that the weak point in the said Act was that the Boards had insufficient powers to deal with recalcitrants and were dependent on the consent of the creditor. (See statement of objects and reasons for the Central Provinces and Berar Relief of Indebtedness Bill of 1938). The Cochin State was obliged to abolish the Debt Conciliation Board with the observation that " though the Chairman and the Members of the Board had exerted to the utmost of their capacity, the Government had found that the expenditure, time and labour involved, had not been commensurate with the result achieved " and has recently passed a similar Act (Act XVIII of 1114). Bombay has also passed an Agricultural Debtors' Relief Act wherein the element of compulsion is embodied. The Debt Relief Enquiry Committee of Travancore recently recommended the passing of a Debt Relief Act providing for compulsory scaling down of debts; and at a joint session of the two Houses, the Travancore Government accepted the principle that conciliation should make room for compulsion.

13. If we now look at the other side of the picture we find that it is admitted on all hands that the effect of debt legislation is that it would considerably dry up the most important source of credit at present available to the agriculturists. As observed by Sir M. G. Deshapande: "Even in Government reports the admission is manifest that the establishment of the Debt Conciliation Board has resulted in the shrinkage of credit of the agriculturists and that they are finding it extremely difficult to secure loans for agricultural operations." If compulsory scaling down of debts is introduced, it would completely upset the credit machinery of the State. It will also have a very demoralising effect as the debtor would be out to look up to the State to rescue him out of an impossible situation. Such legislation would induce the borrowers to become reckless in the hope that agitation would always bring about the necessary legislation lessening the burden of debt. As observed by Professor B. Mukherji of the Lucknow University: " It would be foolish to imagine that the problem of rural indebtedness has been or can be solved by the debt relief legislation. It has not been solved and never will be by such one-sided legislation. A mere reduction in the rate of interest or forcible scaling down of debt will not solve the problem of agricultural indebtedness in the long run. Economic laws cannot be cheated " (Indian Co-operative Review, January-March, 1939).

14. Any substantial redemption is not possible so long as the need for borrowing exists and also so long as alternative agencies for borrowing are not instituted. The Agriculturists' Relief Committee in Mysore have estimated the agricultural debt in the State at not less than 35 crores of rupees. They are also of opinion that practical considerations and the amount involved preclude any attempt by the State for the payment of the debt in cash or in bonds. In view of their limited resources, even the Co-operative Societies and the Land Mortgage Banks cannot be expected to tackle the whole problem of agricultural indebtedness in the State. The Royal Commission on Agriculture has observed: "In the present state of India, he (the moneylender) is a necessity and that being so, his calling will not be abolished by making it illegal. He alone is in a position to provide the bulk of the capital required for current agricultural needs and on a recurrence of severe distress he will continue, as in the past, to support people by timely loans". He is thus an indispensable factor in our rural finance.

15. Even as early as 1935, the Committee appointed to consider the question of amending the Agriculturists' Relief Act, had expressed that " there is a general concensus of opinion, though a few persons have expressed themselves otherwise, that as the result of the drastic provisions of the Regulation, the credit of the agriculturist is greatly curtailed with the result that they are finding it increasingly difficult to obtain even small loans required to meet their urgent and unavoidable needs." The position has definitely gone worse with the passage of time and with the passing of the Debt Conciliation Act. It is not therefore wise to eliminate the moneylender as a class and completely kill the little credit facilities available to the agriculturist by introducing too harsh a measure. The foregoing considerations compel me to feel that a complete adoption of compulsion is not immediately necessary or advisable. I think, however, that some strengthening of the element of compulsion is called for to deal with the recalcitrants, and that it should, however, be done in such a manner as not to come into conflict with the underlying principle of voluntary conciliation.

16. It is hardly necessary to state that no scheme for the relief of indebtedness can be really helpful unless some effective means are provided for repayment of the conciliated debt. The absence of such a provision would merely make the scheme purely theoretical and make the conciliation of debts meaningless. At present the creditor has great grievances against conciliation inasmuch as debts are reduced considerably and spread over long terms extending over 20 or 30 years, and even these instalments are not paid regularly. The one form of settlement that appeals most to him is the offer of cash payment though it is much less than the amount really due to him. If he would be paid in cash he could be prevailed upon to make considerable sacrifices. In fact it was freely expressed in all the places that I visited, both by the debtors and the creditors, that creditors were willing to forego not only interest but some portion of the principal also if they were assured of receiving payment either in cash or debenture bonds guaranteed by Government. It is as a result of their feeling a sense of helplessness in the matter of recovering loans advanced by them and apprehended reductions at the hands of the Board that they have taken to various ingenious devices to frustrate the aims of law by taking documents for much larger sums than are really advanced and also taking sale deeds of properties where only a mortgage was intended. If only a scheme could be formulated, whereby the land mortgage banks and the primary societies could be utilised for advancing long term credit to the agriculturists such collusive or clandestine practices will disappear and conciliation would be more easy and more effective.

17. The Land Mortgage Bank is an indispensable complement to all schemes of debt relief. It is not all debts that these banks are prepared to pay. It is only such debts as are covered by sufficient security that the banks undertake to discharge. In our State they advance loans up to 50 per cent of the value of the security offered. It was represented that there would generally be no necessity to conciliate the debts of a debtor whose debts amount to only 50 per cent of the value of the landed property as the debtor in such cases would generally be capable of discharging his debts and the creditor, being satisfied with the security, will not generally press for repayment. Where the assets and liabilities are equal, the Land Mortgage Bank does not come to the rescue of the debtor. It is here that the Debt Conciliation Boards can persuade the creditor to reduce his claim so that it would be possible for the debtor to approach the Land Mortgage Bank for a long term credit. The process of conciliation would be very much helped if the rules governing the grant of loans by the Land Mortgage Banks are relaxed so as to permit them to grant loans up to 70 per cent of the value of the security offered. The Agriculturists' Relief Committee recommended that in view of the fall in land values due to depression a margin of 50 per cent was unduly restrictive and proposed that the limit up, to which loans may be sanctioned may be raised to 70 per cent of the market value. In their order dated the 30th October 1935, on the recommendations of the Agriculturists' Relief Committee, Government accepted the above recommendation of the Committee to raise the limit of the loan to 70 per cent of the value of the properties hypothecated. It is a matter for consideration whether action may not now be taken to amend the bye-laws of the Land Mortgage Banks in that behalf.

18. If the Land Mortgage Bank is to be in a position to come to the rescue of deserving debtors, it should be placed in possession of adequate funds to achieve it. "With the growing volume of conciliated debt that will have to be paid off through its agency it will be necessary to empower the Bank to raise the funds needed through the issue of further debentures guaranteed by Government". It is also necessary that in order to make the Bank popular with debtors some changes have to be effected in the method of its working. The Bank does not now issue any loans below Rs. 300 or in excess of Rs. 5,000. It seems that this lower limit must necessarily deny the utility of the Bank to a considerable portion of the debtor class. As the Act now provides that a debtor who has got a minimum debt of Rs. 100 can apply to the Debt Conciliation Board for relief, I think the minimum amount to be granted by the Bank may also be lowered to Rs. 100 so that the Bank may be of help to a greater number of debtors among poorer clases. Regarding the upper limit of Rs. 5,000 also, some change would be desirable. The Boards being empowered to conciliate debts without any pecuniary limit, there may be many cases where the conciliated debt may amount to more than Rs. 5,000. Such cases are sure to occur frequently in respect of coffee planters in Malnad. In

27. The economic depression has affected equally both the big and the small agriculturists. Both of them are equally in need of relief. On account of general financial status, it seems unnecessary to make an innovation, that would create an invidious distinction. Moreover, as observed earlier, it is most unlikely that the State would undertake to pay for creditors or guarantee payment to them, and therefore the argument that if big debts are included the total amount of debt to be dealt with would be beyond the possibility of redemption loses its force. I may also refer in this connection to the observations of *Rajamantrapravina* Mr. S. P. Rajagopalachari, the then First Member of the Council, when he moved that the Debt Conciliation Bill as amended by the Select Committee be taken into consideration. "As the Bill will apply only to settlements on voluntary basis, the value of the debts which are to be conciliated is not a very material point. If larger sums than Rs. 10,000 could be dealt with under the Bill, I say so much the better for all concerned and the country as well."

28. During my enquiry it was also brought to light that some persons who are burdened with heavy debts have also a number of small debts due to them. If the restriction suggested above is adopted, it would have the effect of cutting down their assets while their debts would be left intact, a contingency which should be avoided as far as possible. In view of the foregoing considerations, it seems to me that no restriction need be placed regarding the pecuniary status of the debtor. In this connection I may be permitted to observe whether it is not desirable to make a survey of agricultural indebtedness in the State by taking advantage of the coming Census Operations in 1941 by collecting the necessary statistics in this behalf. (In the last Census of 1931, such information seems to have been collected in Travancore.)

29. Section 3 provides that the Board shall consist of a Chairman and two members. Rule 3 (1) provides that the quorum necessary for the transaction of business at a meeting of the Board shall be two, of whom one shall be the Chairman. Whenever a vacancy occurred consequent on the death or resignation of a member of the Board in view of the mandatory provision of section 3 (1), the Boards cannot function till the vacancy is filled up. It was urged that so long as the Board has the necessary quorum it should be made possible for the Board to function notwithstanding any vacancy. It seems desirable to introduce a clause as is done in the Bombay Agricultural Debtors Relief Act, 1939, that the occurrence of any vacancy on the Board through death or resignation or removal of its members shall not in any way affect the validity of any proceedings pending before the Board and the said proceedings shall be continued before the said Board as if there was no occurrence of any such vacancy. I may also add that in the rules under the Central Provinces Act it is provided that a "Board having a quorum may act notwithstanding any vacancy in the number of its members other than the Chairman."

30. Debt as defined in section 2 (*e*) excludes from the operation of the Act arrears of wages, land revenue or anything recoverable as arrear of land revenue, rent as defined in the Mysore Land Revenue Code or any money for the recovery of which a suit is barred by limitation. It was urged that this definition works as a hardship to persons who have got a right to get maintenance either under decree of court or otherwise and that such liability in respect of maintenance should also be excluded from the definition of the debt. There is much force in this contention as the persons to be affected happen to be either helpless women or minor children. It is therefore desirable that the definition of debt is suitably amended by excluding any liability in respect of maintenance whether under a decree of court or otherwise. It is also for consideration whether it is not also desirable to amend the definition so as to exclude any tax, cess or payment due to any municipality or village panchayet or other local authority.

31. It was urged in all the places that the Act is one-sided—all against the moneylender. There are so many penalty clauses in the Act that even a slight mistaken procedure on the part of the creditor means discharge of his debts. But there is no such penalty for the debtor. In respect of the petition filed by the creditor, the debtor may or may not appear before the Board and though he may have appeared at one stage, he may discontinue to appear later on with impunity. The creditor finds his position helpless and his application is perforce to be dismissed. He naturally feels that the Act is discriminatory and that in fairness the debtor should not be allowed to have his own way and there must be some

penalties which will induce him to appear before the Board. It is true that the Act is mainly intended for the benefit of the debtor and if in respect of an application filed by a creditor, the debtor does not comply with the notice or fails to furnish particulars and in consequence the application gets dismissed, it is the debtor that ultimately suffers. But all the same the creditor and the Board should not be left to the mercy of the debtor and he must also be made to feel that his indifference would be visited by some sort of penalty. I would therefore suggest that we may introduce in our Act a provision similar to section 13 (3) of the Bengal Agricultural Debtors Act that if any debtor fails to comply with a notice under section 8 (2) or to furnish particulars under section 8 (3) and the Board consequently dismissed the application, it may allow against the debtor such costs as it considers reasonable and such costs will be recoverable as an arrear of land revenue on an application made within ninety days by a creditor to whom the same is due.

32. Another point that was seriously urged at all places was the abuse by unscrupulous debtors of the provisions of section 26 and the right to file any number of applications. It was urged that the beneficial effects of Agricultural Relief (Amendment) Act, 1935, is practically nullified by the Debt Conciliation Act, inasmuch as when a property is brought for sale, the debtor files an application before the Board and consequently the further execution proceedings in the Civil Court are automatically stayed. The debtor does not stop there. Once the sale of his property is stayed, he grows indifferent about the prosecution of his application before the Board and finally allows it to be dismissed for default or for failure to furnish particulars. When the creditor again takes the trouble and brings the properties to sale; the debtor in his turn files a fresh application before the Board and has the satisfaction to see that further proceedings before the Civil Court are stayed. The creditor is thus in a way effectively prevented, by the dishonest methods of the debtor, from reaping the fruits of his decree. To use the words of Castello J. : "It is possible even under the general law for a dishonest debtor, even if he be a judgment-debtor, to evade his just obligations and to avoid discharging the debt which he undoubtedly owes. But now a further weapon has been placed in the hands of the dishonest debtors in the shape of the intervention of the Debt Settlement Boards". (See Manindra Mohan *vs.* Bepin Behari 41 C. W. N. 1370.). It is therefore urged that some restriction should be placed on the debtor's right to file successive applications before the Board. There seems to be much force in this contention. There has recently been a decision of the Madras High Court that the debtor is entitled to have the proceedings stayed only once and when he allows his petition before the Board to be dismissed and comes again with a fresh application he is not entitled to get relief under section 26. (A. I. R. 1940, Madras. 31.)

33. It is not possible to say what view of the law our High Court would take when a similar question goes before them. Irrespective of the debtor's right to get the proceedings stayed on a second application, it seems necessary that some check should be placed on his vagaries. Otherwise the valuable time of the Board is wasted and the creditors are also unnecessarily harassed. In Punjab Relief of Indebtedness Act a bar has been placed on the right of the debtor to file successive applications. Section 19 of that Act provides that if once an application has been made by a debtor and disposed of, no Board shall entertain a second application within two years of the date of disposal of the first application. A similar provision may be incorporated in our Act, limiting the period of disability to one year only. This would greatly satisfy the creditors and make the debtors prosecute their applications diligently.

34. *Section 9.*—During the enquiry it was represented that with a view to defraud creditors certain debtors alienated their properties and then applied to the Debt Conciliation Board for the conciliation of their debts and that it was necessary that such practices should be discouraged. A clause may be added to section 9 that where the Board is satisfied that the debtor has within 180 days before the date of the application made by him under section 4, transferred any of his property with intent to defraud his creditors, it shall dismiss the petition.

35. *Section 14.*—In an earlier portion of my report I have stressed upon the desirability and the necessity for strengthening the element of compulsion, without coming into conflict with the principle of conciliation on voluntary basis. This could be achieved if power is given to the Board to pass

an order that where an agreement is arrived at between the debtors and creditors to whom more than 50 per cent of the debts are due, the other creditors should accept an offer made by the debtor, if in the opinion of the Board the offer is a fair one. Such a procedure is in force in Bengal and is said to be working well. (See section 19 (*b*), Bengal Agricultural Debtors Act. There, it is enough if creditors to whom only 40 per cent of the debts agree.) When the creditors to whom more than 50 per cent of the debts are due, agree to a settlement, it will not be unfair to infer that the agreement is a fair one and no serious harm is likely to be caused to other creditors if it is ordered that their debts shall also be settled in accordance with the offer made by the debtor. (This method of compulsion is not novel. Even under the Insolvency Act a compcsition scheme which in effect corresponds to the scheme of debt conciliation, is binding on all creditors if a majority in number and three-fourths in value of all the creditors whose debts are proved, accept the proposal. See section 38 of the Insolvency Act.) It is possible that in some cases of conciliation, genuine creditors suffer, because of the fictitious creditors entered in the list. The fictitious debts are introduced to overcome the difficulty of securing the consent of creditors to whom more than 50 per cent of the debts are owing, and also to force the unwilling creditors to come to an agreement as otherwise their right of recovery would be postponed. But any discovery of such fraud would make the application liable to be dismissed, and simply because it is likely that the provisions of the Act are likely to be abused by some dishonest debtors, it is no reason why its beneficial effects should be denied to a larger number of honest debtors. It seems to me therefore that the popular wishes regarding the introduction of the element of compulsion may be conceded to the extent provided in section 19 (*b*) of the Bengal Agricultural Debtors Act and section 14 of our Act amended accordingly.

36. Another important representation from almost all the persons in all the places was to the effect that unless the distinction now made between secured and unsecured creditors is removed, no real benefit will accrue to the debtors from the Debt Conciliation Act. It was urged that the majority of the debts were secured debts and in view of the second proviso to section 14, the secured creditors were generally unwilling to agree to conciliation, with the result that the Boards were feeling helpless when any secured creditor or a number of secured creditors to whom more than 50 per cent of the debts were owing were not agreeable to reduce debts as suggested by the Board. It is true that section 19 provides that where a creditor has unreasonably refused to accept an offer made by the debtor which, in the opinion of the Board, was a fair offer, the Board has the power to give a certificate which will have the effect of disentitling the creditor to future costs of suit and to claim interest in excess of 6 per cent. This has not, however, acted as a sufficient deterrent on the secured creditor. The reason for the secured creditor's reluctance to join in the agreement must be something different from the protection given to him under the 2nd proviso. This attitude on the part of the secured creditor can easily be understood if we consider his position under the existing Act. The position seems to be somewhat as follows. When a secured creditor enters into an agreement with the debtor, his mortgage lien on the mortgage property would be extinguished and his position would be little better than that of an unsecured creditor. If he refuses to agree to the settlement, his right to proceed against the secured property is protected by the 2nd proviso to section 14. The Board can no doubt grant a certificate under section 19, but as already observed, the certificate has no deterrent effect. In fact, it would not be surprising if a secured creditor believes that by refusing to enter into an agreement he would gain more than by entering into an agreement, and losing his lien on the mortgage security. It is desirable therefore than an amendment is introduced with a view to induce him to come to a settlement without fear of losing his lien on the mortgage security. It was with this object that the Central Provinces Debt Conciliation Act was amended in 1936 by adding section 12-A, whereby the mortgage security of a secured creditor joining in an agreement is permitted to subsist until the amount due to him has been paid or the property has been sold for the satisfaction of such debt. Section 27 of the Bengal Agricultural Debtors Act also contains a similar provision. I would therefore suggest that our Act may also be amended by adding a provision corresponding to section 12-A of the Central Provinces Debt Conciliation Act. With this amendment, one may be sure that the reluctance of the secured creditor to come into an agreement will be very much reduced. In view of the suggestion made in the previous paragraph to amend the section on the lines of section 19 (*b*)

of the Bengal Agricultural Debtors Act, the 2nd proviso to section 14 may also be suitably modified.

37. Debts due to Co-operative Societies are included within the scope of the Act, for the definition of a creditor includes a co-operative society. But the first proviso to section 14 provides a special safeguard to co-operative societies that when a co-operative society is one of the creditors, no settlement, in so far as it affects the debts owing to such society, shall be valid without the previous approval in writing of the Registrar of Co-operative Societies in Mysore. Opinion was fairly unanimous that the co-operative societies as at present worked did not deserve this preferential treatment. They stated it was their experience that the societies were not as a rule more inclined to be generous than the average creditor so that the Act may be made as much applicable in their case as in the case of other creditors. The reason for this exemption being granted to the co-operative societies is probably for the reason that these societies are intended to work in the interests of debtors and their aim, unlike that of the moneylenders, is not to deprive them of their holdings. It is, however, urged that the societies are charging high rate of interest, a higher penal rate in case of default and that they are also recovering advance interest. They stated that the interest charged by the Co-operative Societies would thus generally be not less than what an ordinary moneylender was charging.

38. The Committee on Co-operation in Mysore have observed in their report: "There is an impression, which is not without a basis of fact, that the sowcar is often more lenient in his attitude than a co-operative society can afford to be." In this connection certain observations made by Reilly, C. J. in 15, Mysore Law Journal 230, may not be out of place. "The plaintiffs in this case are a Bank. But perhaps any one who had only heard my description of the transactions with which we have been concerned would be surprised to hear that they are, called a 'Co-operative Bank.' Their transaction with defendant might be represented as, taking the name of 'Co-operation' in vain. The rates of interest they exacted .....appear to me very strange. Eleven per cent was itself a high rate of interest; and 15 per cent in default was an extraordinarily high rate of interest, as they profess to have been satisfied that the security in this case was ample..... And he (Advocate for the Bank) also tells me, what surprises me more, that it is usual for Co-operative Banks in this State to deduct from amounts advanced something for interest in anticipation..... 'One result of that is that the rate of interest stated in a borrower's document regarding a loan misrepresents the actual rate of interest to be paid by the borrower, and in the case of an ignorant borrower, will almost certainly mislead him. It was one of the most objectionable tricks of usurers in other parts of the world to require their borrowers to pay interest in advance. It is to my mind very surprising that co-operative institutions should continue that method of misrepresenting the interest which they are going to take from borrowers..... When we find that co-operative methods or what are called 'Co-operative methods' work in this way, it is perhaps not so difficult to understand why co-operation has not succeeded in relieving agriculturists of their indebtedness..... .....I hope that those who are in control of this Bank and the Registrar of Co-operative Societies will take into consideration what I have said about the rate of interest and the methods adopted by the Bank."

39. Apart from these unsatisfactory features of the working of the co-operative societies, there are other reasons why the co-operative societies should not be placed in a privileged position.—(i) conciliation must comprise the entire debt if it is to be effective; (ii) a preferential right given to the co-operative societies would cause a grievance to private creditors. For these reasons, Prof. P. J. Thomas doubts the wisdom of the decision to give a preferential treatment to the Co-operative Societies. The Travancore Debt Relief Enquiry Committee has also recently recommended that the legislative measure that is going to be passed regarding scaling down of debts should apply also to co-operative societies and co-operative banks. In view of these considerations, it seems desirable that instead of exempting all the societies generally, the Government should be empowered to exempt particular societies or classes of societies at their discretion, so that this concession may be extended only to such of the societies as they consider to be deserving thereof by reducing the lending rate and abolishing penal interest and giving up the objectionable practice of collecting interest in advance (Compare section 25-A of the Agriculturists Relief Act.)

40. *Section 17.*—This section provides that if no amicable settlement is arrived at within 12 months from the date of application, the Board shall dismiss the application. It was urged by some of the members that it is desirable to give certain amount of discretion to the Board to keep applications pending for a longer time when the Board is convinced that honest attempts are being made for arriving at settlement and where neither of the parties is responsible for the delay. It is expected that the proceedings of the Board should be rapid and as free as possible from the intricacies and technicalities of the ordinary civil proceedings. Even in the Civil Courts a time limit of one year is in a way insisted upon for disposing of all cases and the delay in some cases pending before the Board is probably due to the fact that the Boards have not been meeting very often and the petitioners are not diligently prosecuting their petitions. Any relaxation from the mandatory provisions of section 17 is not unlikely to prolong the duration of a petition much beyond one year. A perusal of the tabular statement will show that the average duration of cases ending in agreement is about six months. Even allowing for some delay owing to unexpected causes it should not be difficult to dispose of cases normally within a period of one year. It seems to me, therefore, there is no real necessity to amend the section in the way suggested.

41. *Section 18.*—There is no provision as to what the debtor should do if the creditor refused to accept any amount tendered to him in accordance with the terms of the agreement or in those cases where the creditor is dead and his heirs are not known or where there is a dispute as to who the heirs of the deceased creditor are. To provide for such contingencies a provision may be made in our Act corresponding to the provisions under section 13-A to 13-D of the Central Provinces and Berar Act. (Even the Central Provinces Debt Conciliation Act was amended in that behalf in 1936.)

42. *Section 19 (1).*—One of the most important things to be taken into consideration in deciding whether an offer made by the debtor is fair or not is the repaying capacity of the debtor. Though this aspect might be said to be covered by item No. (6) in sub-clause (1), it is desirable that a specific clause to the effect is embodies in that section.

43. *Section 23*:—There seems to be a widespread feeling that the aggrieved parties should have the right of appeal or at least of revision against the order of Debt Conciliation Boards. In an article in the Indian Co-operative Review for January-March, 1939, regarding Debt Relief in the Central Provinces, Sir M. G. Deshpande observes: "The crowning absurdity of the Act is that there is no provision for any revision or appeal against the order of the Debt Conciliation Board. The Board has jurisdiction over cases involving an amount of Rs. 50,000 (Our Boards exercise no limit of pecuniary jurisdiction) whose Chairman is an officer of the Provincial Service, is final. This is not only absurd but entirely prejudicial to the interests of the creditors, in fact, against all principles of equity and fairplay." But it must be remembered that "the Conciliation Boards are not courts in the ordinary sense of the word, and they are more or less executive and advisory bodies, advisory to the parties who come before them." When the High Court were consulted before introducing the Bill, they were strongly of opinion that throughout their activities, it was desirable that the Boards should not be tramelled by the strict procedure of courts and that their proceedings should not be subject to revision by the High Court. But in view of the various amendments proposed to the Act which, if adopted, may affect in various ways the rights of the parties that appear before the Boards, it may be desirable to give the aggrieved parties a right to have the correctness of the Board's decision tested by another tribunal. The Board's proceedings being of a summary nature it would not be practicable to give a right of appeal. But granting a right to the aggrieved parties to take up the orders of the Board under certain sections of the Act in revision to the District Judge's Court within whose jurisdiction the Boards are situated, may be favourably considered.

44. *Section 25*:—The section provides that in any proceedings before the Board any party may appear with the permission of the Board by a legal practitioner. A perusal of the last two columns in the appended Statement I shows that while legal practitioners have appeared only in a few cases before certain Boards, they are freely allowed to appear in a number of cases before the other Boards. In all the places that I visited, the opinion regarding the appearance of lawyers in the proceedings before the Board was somewhat divided, some advocating that in the

interests of clients and particularly the creditors living in various places, it would be desirable to allow lawyers, some others were equally definite that the presence of the lawyers retarded the speedy disposals of the cases before the Board. I might also observe that even the members of the Bar were not agreed regarding the desirability of generally allowing the lawyers to appear in the proceedings before the Board. It is generally felt that the presence of legal practitioners would make the proceedings prolonged and complicated and the atmosphere of friendly and practical negotiations and accommodation would be greatly affected and that of litigation re-introduced. In Bengal and Central Provinces as also in Hyderabad, legal practitioners are prohibited from appearing in the proceedings before the Board. Regarding the appearance of legal practitioners before the Board, our Act follows the Madras Act. The proceedings of the Madras Legislative Council when the Bill was under discussion shows that it was with a view to provide for certain exceptional contingencies that a provision was made for the qualified appearance of legal practitioners. Even in the recently enacted Bombay Agricultural Debtors Relief Act, pleaders, vakils and mukhtyars are generally excluded from appearing in proceedings before the Board; a proviso is however added that if the Board, after examining the parties to any proceedings before it, is of opinion that any of the parties is not sufficiently competent to represent his case and that in the interests of justice it is necessary to allow such party, the assistance of any pleader, vakil or mukhtyar, or advocate or attorney of High Court, the Board may allow such party at its own cost to be represented by pleader, vakil, mukhtyar, or advocate or attorney of High Court. I think it is desirable to enact a similar provision in our Act, so that the Boards may allow the appearance of lawyers only in deserving cases and not as a matter of course as is now being done.

45. *Section 26*:—This section relates to the suspension of the suit or other proceedings pending before a Civil Court when an application has been filed before the Board in respect of debt relating to the said proceedings. So far as the decrees passed by the Registrar of Co-operative Societies are concerned, they may be pending execution, either before the Civil Court or, before the Revenue Court. The section as it stands does not apply to the execution petitions pending before the Revenue Courts. It is possible that before the approval of the Registrar is obtained for any proposed settlement with the society and the Board could act upon it, execution proceedings before the Revenue Court might have successfully terminated and the debtor's properties sold away and purchased by a stranger. In such a case, the debtor is sure to lose the benefits of the settlement with the co-operative society. It is therefore desirable that just as in the case of proceedings before a Civil Court, a provision is also made to stay the proceedings before a Revenue Court when an application is filed before a Debt Conciliation Board. Similar relief is also necessary in respect of money disputes pending before the Registrar of Co-operative Socieites. It was urged in all the places that such relief was urgently called for in view of the fact that a number of decrees of co-operative societies are pending execution before Revenue Courts and that cases are also pending before the Registrar of Co-operative Societies. I would therefore suggest that section 26 may suitably be amended by the addition of the words "or Revenue Court or the Registrar of Co-operative Societies" after the words "Civil Court."

46. During my enquiry I had occasion to notice that even after sales were held by the Civil Courts but before confirmation, further proceedings in the Civil Court are stayed when an application is filed before the Board subsequent to the date of the sale. It is doubtful if after the sale is held the proceedings could be stayed. It has been held in A. I. R. 1937, Nagpur 98, that when the property has been sold in execution of a decree, the title of the auction purchaser vests in him from the date of sale subject to confirmation; which is inevitable in the absence of any objection and there is nothing in section 21 (corresponding to section 26 of our Act) to prevent the court confirming the sale. In order to make the position clear an explanation may be added to section 26 that: "For the purpose of this section, the execution proceedings for the sale of any property shall be deemed to be pending until such sale becomes absolute."

47. I had also occasion to notice that one of the Boards had conciliated a joint debt on an application filed by one of the executants to the bond in the absence of his co-debtor. There is no provision in our Act empowering the Boards to conciliate a joint debt while one of the parties to the document is not before the

Board. The reason is obvious that any settlement by a creditor with his debtor behind the back of the surety will discharge the liability of the surety. It is, however, necessary that the Board should be invested with power to deal with such debts also with a proviso safeguarding the rights of the creditor to proceed against the absentee debtor. Such provisions are to be found in the Bengal Agricultural Debtors Act and also in the recently enacted Bombay Agricultural Debtors Relief Act.

48. I should like to make one other suggestion. In good many cases where the debts are far in excess of the assets, no conciliation is possible and repayment of the debt is also out of the question; and insolvency seems to be the only proper solution; but most agricultural debtors would not resort to it willingly. At present when such cases come before the Board, the applications are dismissed on the ground that conciliation is impracticable. Mere dismissal on this ground will not help either of the parties. When the debtor is past redemption it is no use to allow him to continue in that condition. As remarked by the Agriculturists Relief Committee: "Such debtors should be afforded a chance of surrendering all their assets and being adjudged insolvents so that they may earn their living, if they can, freed from the perpetual bondage of an impossible debt." A provision may therefore be made in the Act requiring the Boards in such cases, to report the matter to the Court having jurisdiction which may deal with the reference as if it were an application under the Mysore Insolvency Act.

IV. Concluding Remarks.

49. Subsequent to the passing of the Government Order directing an enquiry into the working of the 6 Debt Conciliation Boards then in existence, the scheme was extended by establishing a Board at Chikmagalur with effect from 31st February 1940, with the Deputy Commissioner as Chairman. The jurisdiction of the Board extends over two taluks of Chikmagalur and Mudgere, the two important coffee growing taluks in the State. The cases that have already come before the Board indicate that it is likely that the Board would have to deal with a number of applications involving a debt of over Rs. 5,000. The question of financing these debtors to pay up to the conciliated debts (which will generally exceed Rs. 5,000) will also be of special importance. The working of this Board will thus be of special value for the reason that it deals with big agriculturists and is presided over by a high officer like the Deputy Commissioner.

50. Coming to the amendments suggested by me, I am afraid that they may seem too drastic to some, while they may appear too halting or inadequate to some others. But I may assure these persons that they have been suggested with due regard to the welfare of the State as a whole. The suggested amendments are expected to give better relief to the debtors without giving any reasonable ground for any feeling of alarm on the part of the creditors.

Nobody can deny that the problem of agricultural indebtedness has been agitating the minds of all for a long time and is not capable of easy solution. But this feeling need not deter us from our attempts to find proper means to give relief to the debtors. As remarked earlier, the debt legislation may consist of only temporary and partial expedients and the peasant, once relieved of his debts, may again come back to his old state of indebtedness sooner or later. But "no doctor would, however, refuse to give the prescription for improving the condition of the patient through the fear that the patient might lapse back into the same state of malady."

Before concluding, I may be permitted to express my gratitude to the benign Government for their kindness in giving me an opportunity to study the working of the Debt Conciliation Scheme in the State, and express my views and offer my suggestions on the problem of indebtedness which vitally affects the well-being of the vast rural population in the State.

25th March 1940. B. K. RAMAKRISHNAIYA

SUMMARY OF RECOMMENDATION.

Sl. No.	Para No.	
1	15	A complete adoption of compulsion is not immediately necessary or advisable.
2	,,	The element of compulsion already present in the Act should, however, be strengthened.
3	16	Arrangements for immediate payment of settled debts is highly desirable.
4	,,	Payment of settled debts should be arranged through the Land Mortgage Banks and Co-operative Societies.
5	17	The maximum limit up to which loans may be granted by the Land Mortgage Banks may be raised from 50 per cent to 70 per cent of the market value of the security.
6	18	The minimum amount for loans granted by the Land Mortgage Banks should be lowered to Rs. 100.
7	,,	The upper limit of Rs. 5,000 should be raised in deserving cases where adequate security is forthcoming.
8	19	Land Mortgage Banks should be opened in all places where the Debt Conciliation Boards are established.
9	,,	The work of the Land Mortgage Banks and the Debt Conciliation Boards should be Co-ordinated.
10	21	The repaying capacity of the debtor should be improved.
11	22	Judicial Officers may be tried as Chairmen of the Debt Conciliation Board in some places.
12	23	It is not necessary to increase the strength of the Board.
13	25	It is not necessary to amend the definition of "debtor," limiting the scope of the Act to pure agriculturists only.
14	28	No debtor need be excluded on account of his pecuniary status or of his being heavily indebted.
15	,,	Statistics regarding the agricultural indebtedness may be collected in the coming census operations of 1941.
16	29	Section 3 to be amended by adding a saving clause enabling the Board to function notwithstanding any vacancy due to death, resignatisn or removal.
17	30	The following debts to be excluded from the definition of debt— (i) Claim for maintenance either under a decree of court or otherwise; (ii) Tax, cess or payment due to municipality, village panchayet or other local authority.
18	31	The Board may be empowered to order costs when dismissing a petition for failure of a debtor to comply with a notice under section 8 (2) or to furnish particulars under section 8 (3).
19	33	A provision to be made in the Act., placing a bar on the right of the debtor to file successive applications.
20	34	Section 9 to be amended by the addition of a clause making the application liable to be dismissed if the Board is satisfied that an alienation by the debtor within 180 days before filing the petition was with a view to defraud the creditors.
21	35	Section 14 to be amended by empowering the Board to pass an order directing an unwilling creditor to accept a fair offer by the debtor, where creditors to whom more than 50 per cent of the debts are owing, agree to an amicable settlement with the debtor.
22	36	Section 14 to be amended by permitting the existing mortgage or lien or charge to subsist when a secured creditor agrees to a settlement.
23	,,	Second proviso to section 14 also to be suitably amended.
24	39	First proviso to section 14 to be omitted and power taken by Government to exempt such societies as in their opinion deserve the preferential treatment.
25	40	It is not necessary to extend the period of one year prescribed in section 17.
26	41	Act to be amended by making provision for deposit of the amount by the debtors.
27	42	A specific clause to be added to section 19 that the repaying capacity of the debtor should also be taken into consideration.
28	43	Right of revision against certain orders of the Debt Conciliation Board may be allowed.
29	44	The appearance of lawyers before the Board should be restricted.
30	45	Section 26 to be amended by providing for stay of proceedings before the Revenue Court and the Registrar of Co-operative Societies.
31	46	An explanation to be added to section 26, that execution proceedings should be deemed to be pending until the sale becomes absolute.
32	47	The Boards to have power to conciliate joint debts, even when only one of the debtors files the application before the Board.
33	48	In cases where the debts are far in excess of the assets, the Board should refer the debtor to the Insolvency Court.

25th March 1940. B. K. RAMAKRISHNAIYA